

## SUBCHAPTER D—EXPORT AND DOMESTIC CONSUMPTION PROGRAMS

### PART 80—FRESH RUSSET POTATO DIVERSION PROGRAM

#### Subpart A—Fresh Russet Potato Diversion Program

Sec.

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#### Subpart B [Reserved]

AUTHORITY: 7 U.S.C. 612c.

SOURCE: 66 FR 58349, Nov. 21, 2001, unless otherwise noted.

#### Subpart A—Fresh Russet Potato Diversion Program

##### §80.1 Applicability and payments.

Payment be received or retained with respect to diversions of 2001 Fresh Russet potatoes as allowed by the Administrator of the Agricultural Marketing Service (AMS), of the Department of Agriculture (USDA) using standards set out for consideration in the relevant FEDERAL REGISTER notice published on April 13, 2001 (66 FR 19099) except that total funding for the program may be an amount up to \$12 million. If a person has or will receive such a payment and there is a failure to comply with the conditions for payment or any condition for payment set out in the application, or that otherwise applies, all sums received by a person shall be returned with interest. No other claims for payment by producers or other persons under this part based upon their diversion of potatoes, shall be allowed except as approved by the Administrator of the Agricultural Marketing Service (AMS), of the Department of Agriculture (USDA). In all cases, the Administrator may set such other conditions for payment as may be allowable and serve the accomplishment of the goals of the program.

##### §80.2 Administration and disputes.

Administration of this part shall be under the supervision of the Deputy Administrator, Fruit and Vegetable

Programs, AMS, and implemented for AMS through the Farm Service Agency (FSA) of USDA. Disputes shall be resolved by FSA by using regulations found in 7 CFR part 780.

#### Subpart B [Reserved]

### PART 81—PRUNE/DRIED PLUM DIVERSION PROGRAM

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AUTHORITY: 7 U.S.C. 612c.

SOURCE: 67 FR 11391, Mar. 14, 2002, unless otherwise noted.

##### §81.1 Applicability.

Pursuant to the authority conferred by Section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c) (Section 32), the Secretary of Agriculture will make payment to California producers who divert prune/plums by removing trees on which the fruit is produced in accordance with the terms and conditions set forth herein.

##### §81.2 Administration.

The program will be administered under the direction and supervision of the Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service (AMS), United States Department of Agriculture (USDA), and will be implemented by the Prune

Marketing Committee (Committee). The Committee, or its authorized representatives, does not have authority to modify or waive any of the provisions of this subpart. Such power shall rest solely with the Administrator of AMS, or delegatee. The Administrator or delegatee, in the Administrator's or delegatee's sole discretion can modify deadlines or other conditions, as needed or appropriate to serve the goals of the program. In all cases, payments under this part are subject to the availability of funds.

#### § 81.3 Definitions.

(a) *Administrator* means the Administrator of AMS.

(b) *AMS* means the Agricultural Marketing Service of the U.S. Department of Agriculture.

(c) *Application* means "Application for Prune Tree Removal Program."

(d) *Committee* means the Prune Marketing Committee established by the Secretary of Agriculture to locally administer Federal Marketing Order No. 993 (7 CFR Part 993), regulating the handling of dried prunes produced in California.

(e) *Diversion* means the removal of prune-plum trees after approval of applications by the Committee through June 30, 2002.

(f) *Producer* means an individual, partnership, association, or corporation in the State of California who grows prune/plums that are dehydrated into dried plums for market.

(g) *Removal* means that the prune-plum trees are no longer standing and capable of producing a crop, and the roots of the trees have been removed. The producer can accomplish removal by any means the producer desires. Grafting another type of tree to the rootstock remaining after removing the prune/plum tree would not qualify as removal under this program.

#### § 81.4 Length of program.

Producers diverting prune/plums by removing prune-plum trees must complete the diversion no later than June 30, 2002.

#### § 81.5 General requirements.

(a) To be eligible for this program, the trees to be removed must have

yielded at least 1.5 tons of dried prune/plums per net-planted acre during the 1999 or 2000 crop year. A net-planted acre is the actual acreage planted with prune-plum trees. Abandoned orchards and dead trees will not qualify. In new orchards diverted, qualifying trees must be at least 5 years of age (6th leaf), contain at least two scaffolds, and be capable of producing at least 1.5 tons per net-planted acre. The block of trees for removal must be easily definable by separations from other blocks and contain at least 1,000 eligible trees or comprise an entire orchard.

(b) Any grower participating in this program must agree not to replant prune-plum trees on the land cleared under this program through June 30, 2004. Participants bear responsibility for ensuring that trees are not replanted, whether by themselves, or by successors to the land, or by others, until after June 30, 2004. If trees are replanted before June 30, 2004, by any persons, participants must refund any USDA payment, with interest, made in connection with this tree removal program.

#### § 81.6 Rate of payment; total payments.

(a) The rate of payment for each eligible prune-plum tree removed will be \$8.50 per tree.

(b) Payment under paragraph (a) of this section will be made after tree removal has been verified by the staff of the Committee.

(c) The \$8.50 per tree payment shall be the total payment. USDA will make no other payment with respect to such removals. The producer will be responsible for arranging, requesting, and paying for the tree removal in the specified orchard blocks or orchard(s), as the case may be.

(d) Total payments under this program are limited to no more than \$17,000,000. No additional expenditures shall be made, unless the Administrator or delegatee in their sole and exclusive discretion shall, in writing, declare otherwise.

#### § 81.7 Eligibility for payment.

(a) If total applications for payment do not exceed \$17,000,000, less administration costs, payments will be made